

“Death and Damage on the Highway”

a broadcast by

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**Explaining Amendments to
The Highway Traffic Act of Manitoba**
providing

Indemnity for Motor Vehicle Accidents
and
Highway Safety

Automobile Branch

The Western Canada Insurance Underwriters' Association
Winnipeg, Manitoba

Death and Damage on the Highway



It is not too much to say that with the advent of the motor car the life of people in most civilized countries has been drastically altered. The conditions under which we live have been changed. Our means of communication, our methods of doing business, and, owing to the improvement of the highways, the very face of the countryside, have been changed; and, of course, our laws have changed, designed to keep pace with the march of Time and Progress. As a result of engineering ingenuity changes in the motor car are still being made. In particular, its speed has been notably stepped up, and as a result of a reduction in cost, the ownership and distribution of motor cars throughout the land has been vastly increased. While these changes are taking place the law cannot remain inflexible. The law must change to meet changing conditions where experience indicates that changes are desirable in the public interest.

The development of the motor car has in many ways improved the lot of mankind, and augmented the amenities of life. It has had, however, at least one unfortunate result, and that is a great increase in the number of people killed, the number of people injured, and in the ever-increasing amount of property damaged. That fact throws a consequent duty and responsibility on the owners and drivers of motor cars—the duty and responsibility of taking care that they do not invade the rights of others.

Mr. Justice Middleton, an Ontario Judge, said in a case decided by him:

"While it is quite true a motor vehicle is not an outlaw, it must be borne in mind that the driver is not the lord of the highway, but a man in charge of a dangerous thing, and so called upon to exercise the greatest care in its operation."

The fact is, as you are no doubt aware, that the situation with respect to accidents arising from the operation of motor vehicles thereby causing death, injuries, and property damage, is very grave indeed. The outlook for improvement, unless drastic measures are taken, is not very encouraging.

During the last ten years somewhat under one hundred persons have been killed each year in traffic accidents in Manitoba. During the same period in each and every year nearly two thousand persons have been injured in traffic accidents. In addition there have been a very large number of accidents where damage to property has resulted therefrom. In the last four years these property damage cases have approximated two thousand a year. In 1944 alone the estimated loss from property damage was nearly a quarter of a million dollars. In the vast majority of these traffic accident cases motor vehicles were involved. This great loss of life and limb on our highways (leaving aside for the moment the damage to property) is tragic indeed. Obviously it is a matter of great public importance and concern. Some of the traffic accident cases have led to exceptionally pitiful results.

For example, many will recollect an accident which occurred right here in Winnipeg not so long ago. Two young ladies were standing on the sidewalk talking. A motor vehicle negligently and without warning crashed into them. One of them was killed and the other was crippled for life. The owner of the car, as well as the negligent driver, was found to be judgment proof and carried no insurance. As a result no damages of any sort, even for medical, hospital or funeral expenses could be recovered. In that case, as a result of the benevolent interest of one of Winnipeg's newspapers a public subscription was taken up to compensate in some measure those injured. But surely, compensation to persons injured on the highway by irresponsible negligent motorists should not depend upon the generosity of the public as laudable as that may be.

My attention has been called to another case that occurred only a few months ago in Winnipeg. A man and his wife were driving a motor car on one of our principal thoroughfares. Another car negligently collided with them. The lady was thrown out of the car and received very serious injuries. She spent several weeks in the hospital. She required skilled medical care. The driver of the car that caused the damage carried no insurance. He had no assets. Consequently, no damages were recoverable. These unfortunate people found themselves entirely without redress. In other words, they had legal rights without a corresponding legal remedy.

Under such circumstances, I ask you why should negligent irresponsible motorists continue to enjoy the unrestricted use of the King's Highway? Yet the fact is we have permitted them to do so. Obviously this is a weakness in the present law in force in Manitoba.

The Government has for some time been giving careful consideration to measures that might be taken to remedy this evil. The objects to be achieved are twofold:

First—Greater safety to persons using the highways;

Second—Compensation for personal injury suffered, and damage caused to property.

As a first step, the Government early in 1943 set up a committee of senior civil servants to study the problem. This committee reported early in 1944. The report was studied by a Committee of the Legislature and approved, and later approved by the Legislature itself. It was decided that a draft bill, based on the report, should be prepared. This was done. A Special Committee of the Legislature met during the recess and studied the draft bill and approved the same with certain amendments.

I should add that at all stages of the matter full publicity was given, and the public were invited to attend and make representations. On all of these occasions many persons and organizations did attend or were represented, and made suggestions. As a result, a bill was introduced at the Session of the Legislature just prorogued, and was enacted into law. I think it is true to say that seldom, if ever, has any measure been given more diligent and more careful consideration. Because of the importance and far-reaching effect of the

proposal, prudence and caution demanded that this course should be followed. Although the law has been enacted, the Act does not actually take effect until brought into force by proclamation. This will be done at a later date. In the meantime it is desirable, and in the public interest, that the people of Manitoba be given the fullest opportunity to understand its provisions.

It is my purpose now to discuss and explain this Act, which, when brought into force, will be part of the Highway Traffic law in Manitoba.

First, let me advert to the subject of compulsory insurance which has been mooted by many as a solution to the problem under discussion. Superficially, it would appear to be the answer to the problem. On careful examination, however, many defects appear. This subject in recent years has been exhaustively studied on more than one occasion by competent authorities. Mr. Justice Hodgins, of Ontario, made a report thereon in 1930. Mr. John J. Robinette, K.C., of Toronto, published a detailed study of the subject in 1942. In 1941 and again in 1942 a committee of the New York State Bar Association made reports relative to the matter. All these authorities reported against compulsory insurance. The Manitoba Committee of Civil Servants which I have mentioned took a similar view.

What are the reasons given for rejecting compulsory insurance as a solution?

1. Compulsory insurance is definitely not a safety measure;
2. Compulsory insurance leads to an increase in the cost of insurance;
3. In Massachusetts compulsory insurance has led to the government becoming involved in rate fixing;
4. Compulsory insurance has increased the frequency of fraudulent claims;
5. By taking away underwriting judgment, compulsory insurance puts on the road drivers who should be off.

These results have been the experience of Massachusetts after an eighteen-year test—a lead which no other State of the Union and no Canadian Province has been willing to follow.

Let me say this: If it should be found in the light of experience that the measures in the new legislation are inadequate, and it is desired to go further and impose compulsory insurance in spite of its apparent defects this further step can always be taken. If, however, compulsory insurance were now adopted and proved to have the undesirable features attributed thereto, it would be difficult, if not impossible, for many reasons to retrace the step taken and adopt other measures.

Now what does the new legislation offer in place of compulsory insurance? The Government believes that this measure will be conducive both to safety on the highways and to the recovery of compensation for injuries suffered and damage caused. It has a dual purpose:

First—Safety;

Second—Better opportunity to recover damage for loss sustained.

It is based in large measure on legislation first enacted in New Hampshire and adopted with some changes in the State of New York. The underlying principle is that the reckless driver who is unable or unwilling to compensate persons whom he injures finds himself in difficulties and the use of the highway is denied to him forever. The legislation makes it decidedly advantageous for a person to carry public liability and property damage insurance, and very inconvenient for him if he does not carry it in the event he is involved in an accident. On the other hand, a person who does not use his motor car a great deal, and is careful enough, and fortunate enough, to avoid accidents may decide not to insure. Because of this many farmers in the Province may so decide. This course is left open but nevertheless the new law creates a strong incentive to everyone to insure.

The Manitoba legislation, however, contains two additional features which are not found in the United States legislation that I have mentioned:

1. The impounding provisions;
2. The Unsatisfied Judgment Fund.

In this respect Manitoba has pioneered, has charted new ground in the effort to reduce death and injuries, and secure compensation for damage suffered as a result of motor vehicle accidents. I will refer later to these two additional provisions in the Manitoba statute.

The central feature of the law recently enacted in Manitoba which is comparable to the New York-New Hampshire law is this: Where a motor vehicle is involved in an accident in which any person is killed or injured, or damage exceeding twenty-five dollars is done to property, then the registration of the vehicle and the license of the driver must be suspended until he does two things—

- (1) He must put up security sufficient to satisfy any judgment that may be recovered against him, up to certain maximum amounts stated in the Act;
- (2) He must give proof of financial responsibility for any future accident.

However, if the motorist carries Public Liability and Property Damage insurance he has no difficulty. The insurance is taken as sufficient security for the accident; it will, if maintained, also be taken as proof of financial responsibility for future accidents. So the person who carries insurance is in no difficulty whatsoever.

If no insurance is carried at the time of the accident, the security to satisfy a possible judgment will have to be put up in cash or good negotiable securities such as bonds.

That is not the whole story of the difficulty of the uninsured driver. On the occurrence of an accident of the type I have mentioned, one of the special features of the Manitoba law, to which I have

already alluded, comes into effect. That is to say, the motor vehicles involved in the accident will be impounded by the police and held until the owners put up security to satisfy possible judgments that may be recovered, and also provide proof of financial responsibility for any future accident. In this case also, if a motorist at the time of the accident carries Public Liability and Property Damage insurance, his motor car will not be impounded and he will have no difficulty. Further, if releases satisfactory to the Registrar are produced indicating that all damages resulting from the accident have been settled, impoundment will not be made; and if the car is already impounded, on the production of releases as aforesaid the impounded car will be released.

A simple method is provided for proving to the Registrar of motor vehicles and to the police that the required insurance is carried. With each policy the insurance company will issue a small card which can be carried on the person or affixed to the car. The motorist merely produces this card to the police and the vehicle will not be impounded.

The provisions for suspension of registration and license and for impoundment do not apply in the case of a stolen vehicle or where the only damage resulting from the accident is to the person or property of the owner.

Now you may say that these provisions for suspension of registration and license, and for impoundment, merely on the occurrence of an accident are pretty "tough." Of course they are "tough." But difficult situations demand drastic remedies. I have already spoken of the grave, indeed tragic, situation that confronts us as a result of motor vehicle accidents, resulting in loss of valuable lives, serious bodily injuries, and property loss, for much of which nothing can be recovered from the persons responsible. In the State of New York in two years after the new law came into effect, the number of persons carrying Public Liability and Property Damage insurance increased 150 per cent. In other words, in 1942 when the new law came into force, 30 per cent. of the motorists on the highways carried insurance. In 1944, two years later, 75 per cent. of the motorists carried insurance. In Manitoba today only 27 per cent. of the motorists carry insurance against Public Liability and Property Damage.

Let me emphasize this point again. Drastic as the legislation may be there is one simple way of avoiding all difficulty. Carry Public Liability and Property Damage insurance. Surely it is not too much to expect that a man who by his actions may kill or maim a fellow citizen, or damage his property, should put himself in a position to make some compensation for the damage caused; particularly as he thereby relieves himself of the worry, annoyance and loss of time consequent on a lawsuit.

The proponents of compulsory insurance allege that it remedies one defect in other financial responsibility laws that require proof of financial responsibility and security to be given AFTER an accident. Compulsory insurance, they say, provides a remedy for the FIRST accident. The government having this fact in mind has adopted in the new law a provision designed to meet this criticism. Provision

has been made to set up a fund, sometimes erroneously referred to as the "Mercy Fund," from which there may be paid judgments recovered against persons who have neither insurance nor assets, in motor vehicle cases resulting in death or bodily injury. Under this provision it will be necessary for the person who recovers the judgment to apply to a judge and satisfy him that the judgment debtor is, to use a current phrase, "judgment proof." Let me say again that the fund will not be available in cases where only property damage is involved. A ceiling is placed on the amount which may be paid from the Fund in any case, namely, five thousand dollars in respect of any one person or ten thousand dollars in respect of any one accident. There is also a "floor" to possible claims on the Fund. Judgments for less than one hundred dollars will not be paid from the Fund.

Where a judgment against any person is paid from the Fund, that person's license and the registration of his motor vehicle will remain cancelled until he fully reimburses the Fund. Obviously, therefore, payment of a judgment out of the Fund in no way assists or protects the guilty party responsible for the damages; and, therefore, the creation of the so-called Fund and the contribution to same by the motorist is not intended to be, and is not in fact, a substitute for Public Liability Insurance.

The Fund is to be raised by a small annual contribution, not exceeding one dollar, to be paid on the registration of each motor vehicle. To begin with the amount levied will be one dollar, but if the demands on the Fund are not heavy, it may be possible to levy a smaller fee or even to suspend for a time its imposition altogether.

When one considers the amount of suffering and loss that has been endured for years by citizens of this province due to motor vehicle accidents—suffering and loss for which in many cases no compensation could be obtained—the government feels, and I think rightly so, that the setting up of this Fund is a step forward which should receive universal approval.

Some criticism has been made of the manner in which the Fund is to be raised. Some suggest that the insured motorist gets no benefit from the Fund and should not contribute. Others argue that the insured motorist has made provision for compensating any one he may injure, and that therefore only the uninsured motorist should contribute.

Let us examine the facts. First, does the insured motorist get no benefit? Indeed he does. The most complete automobile policy he can buy does not protect him in respect of personal injury done to him by another motorist. He may, like anyone else, be injured by an uninsured driver who has no assets, and in that case will be entitled, like anyone else, to claim on the Fund. It must also be remembered that the motorist is also a pedestrian a large part of the time, and so are the members of his family. He and they may well have occasion to benefit from the Fund. Someone says: "Then let all pedestrians, that is, all citizens, contribute." My answer is this: "As the Fund is available only to indemnify persons killed or injured by motorists,

then surely the motorist, and the motorist only, in justice and equity should maintain the Fund."

As to levying on the uninsured motorist only, the first objection is that the Fund might then be regarded as a substitute for insurance, which is definitely not the case. Contributions to the Fund will not relieve the motorist from the hazards and inconveniences of being without insurance. Another objection is that the administrative difficulties of checking on insurance policies at the time of the registration of a motor vehicle and afterwards as to cancellation or expiration of policies would be great.

Finally, as I have said before, this problem of the motor car owners with neither assets nor insurance is one that has arisen as a result of the existence, and increasing use, of motor vehicles. The problem in fact is created by motorists as a class, and I suggest that it is eminently fair that the trifling individual cost of this step taken toward a solution of the problem should be borne by motorists as a class. The benefits which motorists themselves will derive from the Fund are out of all proportion to the slight expense involved. If, as it is hoped, the other provisions of the Act produce results similar to those that have obtained elsewhere, it is to be expected that eventually a large percentage of all motorists in Manitoba will be insured. If that happens, the claims on the Fund will progressively diminish and the cost to motorists for the maintenance of the Fund will be correspondingly lessened.

Under the new law the rules respecting the reporting of accidents are made more stringent. If no police officer is present at the accident the duty is cast not only on the owners and drivers of the vehicles involved, but on all passengers, to report the matter to the police within twenty-four hours.

An important provision of the legislation is that providing for the setting up by insurance companies of an assigned risk plan by means of which a person who has been refused insurance may apply to an Appeal Board set up by the insurance companies, and, if his record is not too black, be assigned to a company which will issue a policy to him. Such a policy will be issued at an enhanced premium. This fact again should prove a deterrent to reckless drivers, and help to promote highway safety. All insurance companies doing business in Manitoba are required to participate in the assigned risk plan.

In conclusion, I would say that, although the provisions of the new law are drastic, and may I say progressive, the owners and drivers of motor cars can save themselves from practically all inconvenience and difficulty that may result therefrom, if they will take out and maintain a policy of insurance for Public Liability and Property Damage. The time has arrived when drastic measures have to be taken to lessen DEATH AND DAMAGE ON THE HIGHWAY. Let us approach this matter in the spirit of the Golden Rule, realizing our responsibility to our fellow citizens; knowing that no law however good, can be made effective without the co-operation and support of the people.